



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2004

Ms. Jennifer Soldano
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2004-5802

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205112.

The Texas Department of Transportation (the "department") received a request for the last check stub of a deceased former employee of the department. You indicate that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). You indicate that the submitted document consists of personal financial information relating to the named individual. As you acknowledge, this office has found that personal financial information not related to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits

programs, among others, are protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

In this case, however, you state that the individual at issue is deceased. We note that a person's common-law right of privacy terminates upon death. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinion JM-229 (1984); Open Records Decision No. 272 (1981). Thus, the submitted information may not be withheld on the basis of the decedent's common-law right of privacy. However, if the release of information about a deceased person reveals highly intimate or embarrassing information about a living person, the information is protected by common-law privacy on the basis of the living person's privacy interest. See Attorney General Opinion JM-299 (1984). In this case, we are unable to conclude that the information at issue reveals highly intimate or embarrassing information about a living person. Therefore, we conclude that none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

You also contend that certain information within the submitted document is excepted from disclosure under section 552.117. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who, prior to the date the governmental body receives a request for the information, request that this information be kept confidential under section 552.024. You indicate that in this case, the former employee elected, prior to the date the department received this request, to keep his home address, home telephone number, and family member information confidential. Thus, the department must withhold the information we have marked in the submitted document pursuant to section 552.117(a)(1) of the Government Code. However, section 552.117 does not protect the social security number of a deceased employee. Thus, the social security number in the submitted document may not be withheld on that basis.

We note that a social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* You inform us that the department obtains employees' social security numbers pursuant to provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 653a(a)(2)(B), (b)(1)(A). Under this federal law, an employer is required to furnish a report that includes the employee's social security number to the Directory of New Hires of

the state in which a newly hired employee works. 42 U.S.C. § 653a(b)(1)(A). However, because the laws regarding the confidentiality of social security numbers are intended to protect the privacy of the individual, the department may not withhold the social security number of the deceased former employee on this basis.

In summary, the department must withhold the information we have marked in the submitted document pursuant to section 552.117(a)(1) of the Government Code.¹ The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

¹We note, however, that if the requestor is the deceased former employee's authorized representative, she has a special right of access under section 552.023 of the Government Code to the information excepted under section 552.117(a)(1). See Gov't Code § 552.023 (providing person or person's authorized representative special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from disclosure by laws intended to protect that person's privacy interest).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 205112

Enc: Submitted documents

c: Ms. Kathryn Moorman
266 CR 4192
Nacogdoches, Texas 75961
(w/o enclosures)